IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 187 of 1986

with

CRIMINAL APPEAL No 188 of 1986

with

CRIMINAL APPEAL No. 189 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

N.F.CHAVDA,ASST.COLLECTOR OF CENTRAL EXCISE

Versus

KANAIYALAL CHIMANLAL SONI

Appearance:

MR DN PATEL, Senior Standing Counsel for the Central Government,for the appellant,
MR SAURABH G.AMIN for respondent no.1,
MR KG SHETH, APP for State of Gujarat
in each appeal.

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 25/10/2001

ORAL JUDGEMENT

All the above-numbered three appeals are filed by Mr. N.F.Chavda, who was then Assistant Collector of Excise Duty, Baroda Collectorate, Baroda under section 378 of the Code of Criminal Procedure, 1973 against common judgment dated February 28,1985 rendered by the learned Judicial Magistrate, First Class, Padra, in Criminal Cases No. 791/83, 792/83 & 793/83, by which the respondent no.1 in each appeal is acquitted of the offences punishable under section 85(1)(b) for committing breach of provisions of section 85(1)(iii) read with section 42 of the Gold (Control) Act, 1968. As common questions of facts and law arise for my determination in these appeals, I propose to dispose them of by this common judgment.

2. During the year 1978, the Reserve Bank of India had conducted auction sale of standard gold bars. M/s.Jayantilal Trikamlal Choksi of Padra, which is a licensed dealer, had purchased standard gold from Reserve Bank of India when auction sale was conducted. The respondent no.1 in each appeal is a certified goldsmith. The case of the prosecution was that the respondent no.1 in Criminal Appeal No.187/86 had obtained and was in possession of standard gold bar weighing 200 grams from M/s. Jayantilal Trikamlal Choksi of Padra on December 18, 1978; whereas the respondent no.1 in Criminal Appeal No. 188/86 had obtained and was in possession of standard gold bar weighing 200 grams from M/s. Jayantilal Trikamlal Choksi on November 28, 1978 and the respondent no.1 in Criminal Appeal No. 189/86 had obtained and was in possession of standard gold bar weighing 200 grams from M/s. Jayantilal Trikamlal Choksi on October 7, 1978 and December 26, 1978. What was alleged by the prosecution was that the respondent no.1 in each appeal could not have possessed standard gold bar in excess of 100 grams and therefore, committed breach of provisions of section 42(1) of the Gold (Control) Act, 1968 which is punishable under section 85(1)(iii) read with section 85(1)(b) of the said Act. The complaint against the respondent no.1 in each appeal was filed by Mr. Noshir Paramroz Chavda, who is common appellant in the appeals. The learned Civil Judge (J.D.) & J.M.F.C. had ordered to number and register the complaints and issue summons to the accused. Thereafter the prosecution had examined; (1) Noshir paramroz Chava, PW.1 Exh.5, and (2) Chandrashekhar Hiralal Patel, PW.2 Exh.7, to prove

its case against the concerned respondent. The prosecution had also produced registers maintained by respondent no.1 in each appeal under the provisions of section 55 of the Gold (Control) Act read with Rule 11 of the Gold Control (Forms, Fees and Miscellaneous matters) Rules, 1961 in support of its case against the concerned respondent. On appreciation of evidence adduced by the complainant, the learned Magistrate held that it was proved that the respondent no.1 in Criminal Appeal No. 187/86 and the respondent no.1 in Criminal Appeal No. 189/86 were in possession of quantity of standard gold bar in excess of 100 grams, but it was not proved that the respondent no.1 in Criminal Appeal No. 188/86 was in possession of quantity of standard gold bar in excess of 100 grams. The learned Magistrate referred to the provisions of section 42(1) as well as section 85(1)(iii) of the Gold (Control) Act and deduced that possession of any quantity of standard gold bar in excess of 100 grams is not punishable under section 85(1)(iii) of the Act because section 85 of the Act applies to primary gold and not to standard gold bar. The learned Magistrate noticed that according to the complainant, the concerned respondent had committed breach of provisions of the Gold (Control) Act either in October or in November or in December of 1978, whereas the complaint was filed on July 7, 1983 and the complaint filed after a period of three years is barred by period of limitation prescribed under section 468(2)(b) of the Code of Criminal Procedure, 1973. The learned Magistrate was of the view that the complainant was not entitled to exclusion of period of limitation as provided in section 469 of the Code of Criminal Procedure because the necessary accounts and registers must have been submitted for the perusal of competent authority under the Act at the relevant time. The learned Magistrate further held that it was not established by the complainant that the respondent no.1 in each case was in possession of any quantity of standard gold bar in excess of 100 grams as an owner and, therefore, the provisions of section 42 were not applicable at all. In view of the above referred to conclusions, the learned Magistrate has acquitted the respondent no.1 in each appeal by judgment dated February 28, 1985, which has given rise to the above-numbered three appeals.

3. I have heard Mr. D.N.Patel, learned Senior Standing Counsel for the Central Government, who appears on behalf of the appellant as well as Mr. Saurabh G.Amin, learned counsel for the respondent no.1 in each appeal and Mr. K.G.Sheth,learned A.P.P. for the State Government.

4. The view taken by the learned Magistrate that the complaints filed by the appellant on July 7, 1983 were time barred and, therefore, the respondent no.1 in each appeal is entitled to acquittal, is totally erroneous in law. It is true that section 468 of the Code of Criminal Procedure prescribes period of limitation and states, inter-alia,that no Court shall take cognizance of an offence of the category specified in sub-section (2) after expiry of period of limitation, but the learned Magistrate has totally ignored the provisions of the Economic Offences (Inapplicability of Limitation) Act, 1974 enacted by the Parliament. The Parliament has enacted the Economic Offences (Inapplicability of Limitation) Act, 1974 to provide for the inapplicability of the provisions of Chapter-XXXVI of the Code of Criminal Procedure, 1973 to certain economic offences. Section 2 of the said Act provides that nothing in Chapter-XXXVI of the Code of Criminal Procedure, 1973 shall apply to any offence punishable under any of the enactments or provisions, if any, thereof specified in the Schedule. In the Schedule appended to the said Act, there is reference to the Gold (Control) Act, 1968 (No.45 of 1968) at serial no.10. Thus, it becomes evident atonce that no period of limitation is prescribed for any offence punishable under the provisions of the Gold Control Act, 1968 and, therefore, the respondent no.1 in each appeal could not have been acquitted on the ground that the complaint filed by common appellant was time barred under section 468 of the Code of Criminal Procedure, 1973. The said finding being erroneous in law, is hereby set aside.

5. The view taken by the learned Magistrate that the respondent no.1 in each appeal was not the owner of the standard gold bar obtained from M/s. Jayantilal Trikamlal Choksi of Padra and, therefore, the concerned respondent has not committed breach of provisions of section 42 of the Act is also based on total erroneous construction of the said provision. Section 42 of the Gold (Control) Act, 1968 prescribes limit on primary gold which a certified goldsmith may possess and, inter-alia, provides that no certified goldsmith shall either own or have at any time in his possession, custody or control (i) any quantity of standard gold bars in excess of one hundred grammes, or (ii) any quantity of primary gold (including standard gold bars) in excess of three hundred grammes. By interpreting that the possession, custody or control of the gold should be as an owner, the learned Magistrate has applied rule of ejusdem generis. The ejusdem generis rule applies when (i) the statute

contains an enumeration of specific words, (ii) the subject of enumeration constitutes a class or category, (iii) that class or category is not exhausted by the enumerations, (iv) the general term follows the enumeration,and (v) there is no indication of a different legislative intent. Before the ejusdem generis rule of construction can be accepted, apart from the fact that the rule must be confined within narrow limits., and general or comprehensive words should receive their full and natural meaning unless they are clearly restrictive in their intendment,it is requisite that there must be a distinct genus, which must comprise more than one species. Reading section 42 of the Gold (Control) Act, it becomes manifest that it does contain an enumeration of specific word 'own', which constitutes a class or category, but that class or category is exhaustive and is not followed by general terms, but by specific terms such as custody, possession and control. The rule of ejusdem generis must be confined to within narrow limits and specific words following the word 'own' must receive their full and natural meaning because those words are not restrictive in their intendment. The term 'possession' is a polymorphous term which may have different meanings in different contexts. It is impossible to work out a completely logical and precise definition of 'possession' uniformly applicable to all situations in the contexts of all statutes. Similarly, the terms 'control' and 'custody' are of wide connotation and amplitude and include a large variety of powers which are incidental or consequential to achieve a particular objective. In the context of the provisions of the Gold (Control) Act, the possession, control or custody of gold by a certified goldsmith may be in the capacity of bailee, mortgagee, pledgee etc. and it is not advisable to construe the phrase 'possession, custody or control' to mean that the possession, custody or control of the gold by a certified goldsmith must be in the capacity of an owner. The words "have at any time in possession, custody or control" do not get colour from the preceding word "own" and, therefore, it is wrong to interpret the provisions to mean that the possession, custody or control or the gold must be as an owner and not otherwise. The interpretation which is put by the learned Magistrate on section 42 of the Gold (Control) Act, 1968 has the tendency to render nugatory the object for which section 42 was enacted. If the intention of the Legislature had been that the possession, custody or control of the gold must be in the capacity of an owner, then a simple provision could have been made by the Legislature and it was not necessary for the Legislature to use different phrases which are exhaustive in nature.

Having regard to the facts of the case, I am of the opinion that by reading section 42 to mean that possession, custody or control of gold must be as an owner, the learned Magistrate has re-written section 42, which is not permissible to a court of law. The said finding being erroneous in law and contrary to well recognised principles of interpretation of statutes, is also hereby set aside and the respondent no.1 in each appeal would not be entitled to acquittal on the ground that possession, custody or control of the gold was not as an owner thereof.

6. However, there is some force in the contention that the complainant has not proved satisfactorily that what was obtained by the respondent no.1 in each appeal was standard gold bar within the meaning of section 2(u) of the Gold (Control) Act, 1968. Mr. N.P.Chavda, PW.1 Exh.5 in his evidence before the Court has stated that at the relevant time he was discharging duties as Assistant Collector, Vigilance and that after obtaining approval/sanction of the Collector, Central Excise, he had filed complaint against the concerned respondent. The witness has stated that the respondent no.1 in each appeal is a certified goldsmith and that the concerned respondent had obtained quantity of standard gold bar in excess of 100 grammes contrary to the provisions of section 42 of the Act. However, this witness has admitted in cross-examination that he had no knowledge whether voucher no.194 was seized from the respondent or not, and that he had not perused the said voucher or G.S. Register no.12 before lodging the complaint. His evidence makes it manifest that he has no personal knowledge whether the respondent no.1 in each appeal had obtained quantity of standard gold bar in excess of 100 grammes. Another witness examined by the complainant is Mr. C.H.Patel at Exh.7. This witness has stated in his examination-in-chief that a certified goldsmith is not entitled to have quantity of standard gold bar in excess of 100 grammes and that the certified goldsmith has to maintain the accounts as prescribed under the Act. The witness has admitted that when Jayantilal Trikamlal Choksi had given gold to the respondent no.1 in each appeal, he was not present and that except seizing the registers, he had not taken any steps in the matter at all. The witness has further admitted that he had no knowledge regarding original or duplicate vouchers and claimed that necessary inquiry regarding original vouchers was made by the then Superintendent Mr. N.D.Joshi. The witness has stated that he had recorded the statement of respondent no.1 in each appeal at the time of seizure of registers, but he had not tried to

ascertain as to whether the respondent no.1 in each appeal had obtained standard gold bar or "dhalki" (gold mixed with copper). The witness has also admitted that after purchase of standard gold bars from Reserve Bank of India, Jayantilal Choksi had submitted necessary accounts from time to time to the competent authority and that the complaint was lodged with reference to the gold which was purchased by Jayantilal from Reserve Bank of India. The witness has admitted that Jayantilal had handed over the gold to the respondent no.1 in each appeal only for the limited purpose of preparing ornaments and that the ornaments were returned to Jayantilal. The witness has admitted that he had not recorded any statement of Jayantilal, nor tried to know from Jayantilal as to whether, in fact, he had given standard gold bar to the respondent no.1 in each appeal or he had given 'dhalki' as claimed by the concerned respondent. The record of the case further shows that the specific defence of the respondent no.1 in each appeal is that he had obtained 'dhalki' from Jayantilal and that standard gold bar was not obtained from Jayantilal. It is an admitted position that the vouchers prepared and issued by Jayantilal were seized from the respondent no.1 in each appeal as well as from Jayantilal, but the best evidence has not been produced by the complainant before the Court in support of his case against the concerned respondent. Therefore, I am of the opinion that the learned counsel for the respondent no.1 in each appeal is justified in urging that an adverse inference against the complainant should be drawn as provided in section 114 of the Indian Evidence Act. No reason has been given by the complainant as to why vouchers and other relevant evidence could not be produced before the Court to establish that what was obtained by the respondent no.1 in each appeal was standard gold bar and not 'dhalki' as claimed by each of them. It is true that in the registers which are seized from the respondent no.1 in Criminal Appeal Nos. 187/86 and 189/86 it is mentioned that standard gold bar was obtained from Jayantilal, but there is no manner of doubt that the respondent no.1 in each appeal is denied the opportunity to establish before the Court that what was obtained by him was 'dhalki' and not standard gold bar as claimed by the complainant. It is an admitted position that in the registers seized from the respondent no.1 in Criminal Appeal No.187/86, there is no reference worth the name that the said respondent had obtained any standard gold bar on November 28, 1978 by Entry No.94 from Jayantilal and, therefore, no evidence at all is adduced by the prosecution to establish its charge against the said respondent. No satisfactory evidence is led by the witnesses examined on

behalf of the complainant that the particulars stated in the relevant entries were checked or verified by any of the officers of the department and were found to be true and correct. Further, it is also not proved satisfactorily that as to who had posted the entries dated December 18, 1978, October 7, 1978 and December 24, 1978 and that on actual verification, the respondent no.1 in Criminal Appeal No.187/86 and Criminal Appeal No.189/86 was found in fact in possession of standard gold bar in excess of 100 grammes. Moreover, Mr. N.D.Joshi, who had seized the vouchers, is not examined, nor registers maintained by Jayantilal, who is licenced dealer, are produced on record of the case to establish about the correctness of the entries mentioned in the registers maintained by the respondent no.1 in Criminal Appeals No.187/86 & 189/86. It is well settled that the evidence of the contents in document is hear-say evidence,unless the writer thereof is examined before the Court. A bare reading of the different entries made in the registers makes it evident that the entries are made in different hand writings and, therefore, unless writer of the entries concerned is examined, no liability can be fastened on any of the respondents on the basis of entries in the register. The learned counsel for the respondent no.1 has stated at the Bar that Jayantilal, who is a licensed dealer, was prosecuted, as according to the complainant, he had given quantity of standard gold bar in excess of 100 grammes to the respondent no.1 in each appeal, but the learned Magistrate has acquitted him, as it could not be proved satisfactorily that what he had given was standard gold bar and not 'dhalki'. The case of the respondent no.1 in each appeal is that in the vouchers prepared by Jayantilal it is specifically indicated that standard gold bar is not supplied and that word used in the vouchers is 'dhalki' i.e. gold mixed with copper and therefore, I am of the view that on the basis of the contents of the registers, the respondent no.1 in each appeal cannot be convicted of the offence with which he is charged. What is contended by the learned counsel for the respondent no.1 is that the licensed dealers after obtaining standard gold from Reserve Bank of India, mix it with copper and give the same to the certified goldsmith for preparation of ornaments and that this fact is admitted in other cases in which acquittals recorded by the learned Magistrate are confirmed by the High Court. On overall view of the matter, I am satisfied that the complainant has not established that the respondent no.1 in each appeal had obtained quantity of standard gold bar in excess of 100 grammes and, therefore, each appeal will have to be dismissed.

For the foregoing reasons, each appeal fails and is dismissed.

(J.M.Panchal,J.)

(patel)